IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5861 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHARATBHAI HARIBHAI VASHI

Versus

BULSAR DIST CO-OPERATIVE BANK LTD.

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Appearance:

MR DD VYAS for Petitioner

MR MB BUCH for Respondent No. 1

MR PREMAL JOSHI, AGP, for Respondent No. 2

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 23/03/2001

ORAL JUDGEMENT

The short question which requires consideration and adjudication, in this petition, under Article 226 of the Constitution is, as to whether, during the pendency of criminal trial, proceedings of domestic inquiry should be

stayed or not.

A few material facts, leading to the rise of this petition may be stated, at the outset. The petitioner was appointed as an Inspector in the respondent Bank, by the order dated 1.1.81. He was, thereafter, appointed as an Administrator of one cooperative society by the order dated 14.5.84. The petitioner was served with a notice by the respondent Bank, on 12.6.87, calling upon him to show cause as to why action should not be taken against him for having caused loss to the respondent Bank, followed by a criminal complaint on 19.6.87 before the Police at Chikhli, alleging that the petitioner has committed offences punishable under sections 409, 465, 468 and 477-A of the Indian Penal Code. He was also suspended. The departmental inquiry was also initiated and chargesheet dated 10.7.87 was served. The petition is, therefore, filed for staying the departmental proceedings since criminal complaint is pending.

It has been contended on behalf of the respondent Bank that the petitioner is, grossly, responsible for misappropriation and misconduct. He has misused the funds of the respondent Bank and also other cooperative societies to which the respondent Bank is rendering services of managing their affairs. Criminal complaints have been filed against the petitioner by the respondent Bank for misappropriation and other charges. Respondents have pleaded that there is no any ban or bar that parallel proceedings of departmental inquiry and criminal complaint cannot proceed simultaneously.

After having heard and considering the facts and circumstances and in view of the settled proposition of law, there cannot be a straight jacket formula that no departmental proceedings should be allowed to continue when the criminal case is filed. It cannot be contended that there is a ban and bar in proceedings, simultaneously, with both the inquiries. There cannot be a legal impediment for simultaneous proceedings being taken against the delinquent employee against whom criminal trial is pending. In the light of the facts and circumstances, in the opinion of this Court, there is no substance in this petition, for granting stay against the departmental proceedings, pending criminal trial.

After due consideration of the peculiar facts and circumstances, the nature and number of charges, the ambit and scope of both the proceedings, type and pattern of allegations, departmental proceedings should not be stayed merely because criminal prosecution is pending.

The ratio propounded by Hon'ble Supreme Court in Kusheshwar Dubey v. Bharat Coking Coal Ltd., AIR 1988 SC 2118 and Division Bench decision of this Court in Regional PF Commissioner v. B.M.Mehta, 1999(2) GLH 192 is squarely attracted to the facts of the present case. There is no fit and appropriate case for staying the departmental inquiry during the pendency of criminal trial against the petitioner.

The petition is, therefore, meritless and is required to be rejected. Accordingly, it is rejected. Rule discharged with costs.

(J.N.Bhatt, J.)

(vjn)